

September 20, 2010

**BY ELECTRONIC FILING**

Marlene H. Dortch  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

*Re: Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA), MB Docket No. 10-148*

*Establishment of a Model for Predicting Digital Broadcast Television Field Strength Received at Individual Locations, ET Docket No. 10-152; Measurement Standards for Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004, ET Docket No. 06-94*

Dear Ms. Dortch:

Representatives of DIRECTV, Inc. (“DIRECTV”) and DISH Network LLC (“DISH Network”) held a series of meetings on September 17<sup>th</sup> to discuss issues related to the above-captioned STELA implementation proceedings. Alison Minea of DISH Network and Stacy Fuller and Andrew Reinsdorf on behalf of DIRECTV, accompanied by DIRECTV’s outside counsel Michael Nilsson, met with Commission staff as follows: (1) with Eloise Gore, Evan Baranoff of the Media Bureau and Susan Aaron of the Office of General Counsel to discuss MB Docket No. 10-148; (2) with Rosemary Harold, Legal Advisor to Commissioner McDowell, to discuss both proceedings; and (3) with Joshua Cinelli, Media Advisor to Commissioner Copps, to discuss both proceedings. These discussions reflected DIRECTV’s and DISH Network’s prior submissions in these proceedings, as set forth in the attached talking points.

DIRECTV and DISH Network also expressed concern that the Commission might, once again, adopt rules regarding carriage of significantly viewed stations that make it impractical to offer such stations to satellite subscribers. As explained below, the right to carry significantly viewed stations does not diminish a satellite provider’s desire to carry local stations. Rather, satellite carriers can now offer small segments of a market the same broadcast stations that have always been available from cable operators. For satellite carriers to operate on equal footing with cable operators, however, they must be confident that their subscribers’ service won’t be unduly and arbitrarily disrupted. Unless the rules are crafted in a manner that can be practically implemented, satellite carriers will not be able to be as competitive in these overlap areas as Congress intended. DISH Network and DIRECTV elaborated as follows:

- Broadcast stations that are significantly viewed outside of their own markets are generally so only in small portions of neighboring markets. Thus, satellite carriers could not use significantly viewed stations to replace local stations in other markets. Therefore, treating satellite carriers like cable operators with respect to significantly viewed service would not give satellite carriers undue leverage in retransmission consent negotiations.
- Satellite providers will not seek to offer significantly viewed stations if they cannot reasonably ensure that their customers' service will not be disrupted through black outs and downrezzing to a standard definition signal. It is particularly difficult to ensure customer satisfaction when a disruption is caused by something unrelated to the station in question, such as a retransmission consent dispute with an entirely different station in a different market or the launch of a new multicast stream of a different station in a different market—all of which would happen under the broadcasters' restrictive interpretation of the statute.

DISH Network and DIRECTV also addressed the requirement to offer local stations in high definition ("HD") format before offering significantly viewed stations in HD format:

- This "HD formatting requirement" applies only "whenever such format is available from [the local] station." 47 U.S.C. § 340(b)(2). Thus, where a station withholds retransmission consent, or where a new multicast HD station is first launched (and the satellite carrier and the station have not reached an agreement for carriage), the HD format is not "available" from such station.
- In order for the HD formatting requirement to apply, a local signal must be "available to the satellite carrier"—*i.e.*, subject to a retransmission consent agreement or mandatory carriage election. Thus, where a local station withholds retransmission consent, its signal is not "available to the satellite carrier" and the satellite carrier is under no restriction with respect to the format of a significantly viewed signal it also imports.
- Every broadcast station that has an HD feed and is carried by a satellite carrier makes the HD feed "available" to the satellite carrier—even if the satellite carrier does not retransmit the HD format of that station to its subscribers. This is because, as a technical matter, the satellite carrier offers standard definition ("SD") service in such situations by taking the HD signal and downrezzing it to standard definition. Thus, the HD signal is "available to the satellite carrier," but the satellite carrier does not "retransmit to a subscriber in high definition format the signal of [such] station"—exactly the situation in which Congress meant to restrict the format of significantly viewed importation. So, if a satellite carrier offered an entire market in SD format only, it could *not* import a significantly viewed station in HD format because the HD format of the in-market station is "available to" it.
- The broadcasters seem to think that a HD signal is "available to" satellite carriers simply because it is being broadcast, in part because other parts of the statute define a satellite signal as being "available" where it is transmitted. Those other provisions, however, deal with the relationship between the satellite carrier and the subscriber—so Congress naturally defined availability in terms of what a satellite carrier offers its subscribers. Here, however, the relevant provision deals with the relationship between the

broadcaster and the satellite carrier. A broadcast signal is legally unavailable to a satellite carrier lacking retransmission consent, and it makes perfect sense for the Commission to interpret the HD formatting requirement to reflect this reality.

- Satellite carriers must obtain retransmission consent to carry stations in areas where they are significantly viewed. Those agreements may not permit satellite carriers to downrez the significantly viewed signal if they do not offer the local signal in HD, but satellite carriers could be required to do exactly that under the broadcasters' interpretation of the law.
- Satellite carriers offer local service in some markets only in HD. Thus, with respect to carriage of a significantly viewed station originating from such market, there would only be one, HD feed of the station on the satellite beam, and that satellite beam would cover both the station's local and significantly viewed areas. There is no technical way for the satellite carrier to downrez such signal only in its significantly viewed area. Moreover, a satellite carrier would likely not have the capacity on its spot beam to add a duplicative, SD version of the station. It would therefore likely be forced to disrupt the service entirely for the viewers in the neighboring market or downrez the signal in the significantly viewed station's home market as well. Neither alternative is a workable solution.

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,

/s/

Michael Nilsson

Attachment

cc: Eloise Gore  
Evan Baranoff  
Susan Aaron  
Rosemary Harold  
Joshua Cinelli